

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 29337-2017E
Purchased 10/04/17

JOSUEL ANTIGUA,

Plaintiff,

-against-

VERIFIED COMPLAINT

THE CITY OF NEW YORK, P.O. MICHELLE
COVINGTON OF THE 48 PCT, SHIELD #11701, TAX
ID #948819, OTHER NEW YORK CITY POLICE
OFFICERS ON ARREST #B14682725 WHOSE
NAMES ARE NOT KNOWN AT THIS TIME S/H/A
JOHN/JANE DOE I-IV, AS IT PERTAINS TO THE
INCIDENT THAT AROSE ON NOVEMBER 23, 2014
AND NO OTHER,

Defendants.

JOSUEL ANTIGUA, by his attorneys, JOHN R. DEPAOLA & ASSOCIATES
PLLC, respectfully alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff JOSUEL ANTIGUA was a resident of Bronx County, City and State of New York.
2. At all times mentioned, Defendant CITY OF NEW YORK, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
3. On or about the 24th day of March, 2017 and within ninety (90) days after some of the claims herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim

arose, the items of damage and injuries sustained so far as was then determinable.

4. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.
5. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.
6. Upon information and belief, at all times mentioned, Defendants P.O. MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID #948819, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B14682725 WHOSE NAMES ARE NOT KNOWN AT THIS TIME S/H/A JOHN/JANE DOE I-IV, AS IT PERTAINS TO THE INCIDENT THAT AROSE ON NOVEMBER 23, 2014 AND NO OTHER, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, THE CITY OF NEW YORK.
7. On or about November 23, 2014, at approximately 3:00 A.M., in the vicinity of the corner of E. Tremont and Webster Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff

JOSUEL ANTIGUA, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about November 23, 2014, at approximately 3:00 A.M., in the vicinity of the corner of E. Tremont and Webster Avenue, County of Bronx, State of New York, the Defendants jointly and severally did place Plaintiff JOSUEL ANTIGUA in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.
11. On or about November 23, 2014, at approximately 3:00 A.M., in the vicinity of the corner of E. Tremont and Webster Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and

unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of Bronx and there charged him with the crimes on Docket No. 2014BX062505. The Plaintiff was thereafter held in custody over the course of two (2) days or approximately forty-three (43) hours until he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.
13. On or about November 23, 2014, at approximately 3:00 A.M., in the vicinity of the corner of E. Tremont and Webster Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's police jail. The Plaintiff was thereafter held in custody over the course of two (2) days or approximately forty-three (43) hours before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

14. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "13" with full force and effect as though set forth at length herein.
15. Upon information and belief, on or about November 23, 2014 and from that time until his acquittal of charges after trial on or about January 25, 2017 which was a favorable termination for the accused, by the Honorable Judge presiding at Bronx County Criminal Court, Part TP3, Defendants THE CITY OF NEW YORK, P.O. MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID #948819, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B14682725 WHOSE NAMES ARE NOT KNOWN AT THIS TIME S/H/A JOHN/JANE DOE I-IV, and innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, New York County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York
16. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.
17. The commencement of these criminal proceedings under Docket No. 2014BX062505 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

18. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

19. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "18" with full force and effect as though set forth at length herein.
20. Defendants P.O. MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID #948819, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B14682725 WHOSE NAMES ARE NOT KNOWN AT THIS TIME S/H/A JOHN/JANE DOE I-IV, AS IT PERTAINS TO THE INCIDENT THAT AROSE ON NOVEMBER 23, 2014 AND NO OTHER, were at all times relevant, duly appointed and acting officers of the City of New York Police Department.
21. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.
22. Plaintiff JOSUEL ANTIGUA is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York

and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

23. The Defendant CITY OF NEW YORK is a municipality duly incorporated under the laws of the State of New York.
24. On or about November 23, 2014, the Defendants, armed police, while effectuating the seizure of the Plaintiff JOSUEL ANTIGUA, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned, assaulted, and had multiple batteries committed against him, without the Defendants possessing probable cause to do so. In this incident, the Plaintiff was in a vehicle that was illegally stopped, searched and seized. P.O. MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID #948819 pulled over the vehicle plaintiff illegally. Officer Covington then illegally searched and seized the vehicle without probable case. Said officer proceeded to unlawfully arrest plaintiff without probable cause. The NYPD officers also had plaintiff maliciously prosecuted by providing false statements to the Bronx District Attorneys office which led to his prosecution. The officer who signed the criminal court complaint against the Plaintiff is P.O. MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID #948819. The named officer processed the arrest of the Plaintiff and/or otherwise along with those named as "JOHN/JANE DOE I-IV" assisted in the investigation that led to the arrest of the Plaintiff. P.O.

MICHELLE COVINGTON OF THE 48 PCT, SHIELD #11701, TAX ID

#948819 was the arresting officer in this matter. Plaintiff is unaware of the names of the officers, aside from the officer already named. Plaintiff had multiple assault and batteries committed to his person including but not limited to being placed on in handcuffs so tight that plaintiff's wrists turned red.

25. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights protected under the United States Constitution:
 - a. Freedom from assault to his person;
 - b. Freedom from battery to his person;
 - c. Freedom from illegal search and seizure;
 - d. Freedom from false arrest;
 - e. Freedom from malicious prosecution;
 - f. Freedom from the use of excessive force during the arrest process;
 - g. Freedom from unlawful imprisonment;
 - h. Freedom from loss of his liberty.
 - i. Freedom from being illegally searched twice.
26. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights protected under the Fourth and Fourteenth Amendments of the United States Constitution.
27. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SEVENTH CAUSE OF ACTION

28. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "27" with full force and effect as though set forth at length herein.
29. Defendant CITY OF NEW YORK has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.
30. THE CITY OF NEW YORK was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.
31. THE CITY OF NEW YORK is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:
 1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.
 3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
31. The foregoing acts, omissions and systemic failures are customs and policies of the CITY OF NEW YORK which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR AN EIGHTH CAUSE OF ACTION

32. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "31" as it set forth at length herein.
33. Defendant CITY OF NEW YORK was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the CITY OF NEW YORK and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

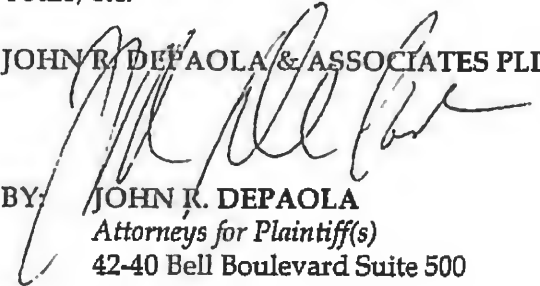
WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the

jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
October 3, 2017

Yours, etc.

JOHN R. DEPAOLA & ASSOCIATES PLLC


BY: JOHN R. DEPAOLA
Attorneys for Plaintiff(s)
42-40 Bell Boulevard Suite 500
Bayside, New York 11361
(718) 281-0400

CITY OF NEW YORK
POLICE DEPARTMENT

B 06112

Name Po Covington Tax Reg. No. 948819

Date Opened 02/04/2015 Supervisory Officer Sgt. Kelly

Date Closed 05/21/15 Supervisory Officer Sgt. Kelly

R/10 5/27/15. Me. 62 0500
2315: Present for duty @ 484.
2320: Roll call, Sgt Amill
2339: 98. RMP 4449
Mileage 29484, gas 1/4
Vehicle checked no Contraband
Partner Po Arias 3898.

(RA) 0002: 61 @ 2260 Crotona Ave 64
Noise Complaint 311

0013: 91

(RA) 0058: 10-34 @ E 188, Park Ave

0118: 84 @ St. Barnabus in
regards

0215: 10-2

0225: meal @ 48 p/L

0325: 98.

0325: Admin @ 48 p/L 61 Robbery

0350: 98.

(RA) 0350: 10-59 @ E 188, Hoffman St

0407: 91 FDNY

03/28/15 0415 hrs Sgt Amill

(RA) 0458: 10-52 Cab @ 2406 Webster Ave

0510: 91

0550: 53 @ Bustn E. Tremont

When we arrived Motorist was
inside ambulance, refused
medical aid ACR # 8161/88

No injuries. While speaking
with motorist in ambulance

~~7/10~~ Ootme I could smell
a faint odor of alcoholic
beverage on his breath
his eyes were watery,
deft was asked if he drank
any alcohol. he stated he
had one beer. Deft said he
came from a party with
his friends, Motorist was
~~taken~~ out of ambulance
because he said he would
take breath test. Motorist
was unsteady on his feet
and swaying.

0559: Breath test given with
Intoxilyzer CMI Ser # 103589
Deft blew a .25

0559: 1, male under (P. Rojas)
Desrosier, Caleb L, DOB 7/22/89
58 Schubert st Binghamton
NY 13905, 2010 Black Chev
Camaro, NY Plate GPK9497,
Motorist was traveling Eastbound
on East Tremont Avenue
Motorist then crashed into
a light pole knocking it
down and then crashed into
the gate of a school.
Motorist friend stated they

had come from B

0610: 84 @ 45 pct.

0713: 98

0730: 84 @ 48 pct

0730: PARC DONE For Accident

0750: EOT p. Cough 11701

3/29/15 Sun Tour 2315 x 0750

COD: white R/P: 5/28/15

Post: T/S duty

2315: Present for duty @ 48 pct

2320: Roll call, Sgt Suarez

2323: on T/S duty

0729: off T/S duty

0750: EOT p. Cough 11701

03/30/15 MON Tour 0700 x 1535.

Assignment Criminal court, AAB

0700: 84, Present for duty @ 48 pct

0834: 84 @ aab.

0913: 98.

0945: 84 @ Crim Court.

1510: 84 @ 48 pct

1535: EOT p. Cough 11701

03/31/15 TUES RDO

04/01/15 Wed RDO

04/02/15 Thurs RDO

04/03/15 Fri Tour 2315 x 0750.

COD: Yellow R/P 6/2/15.

Asst Sgt OP.

2315: Present for duty @ 48 pct

Motorist then cut in front of
school bus.

0839: 84 @ Criminal Court

met with ADA Miller for case
of Carlos Espinal DWI

ADA said case may go to trial.

1519: 98, Court. Deft took plea
pled guilty.

1519: EOT P. Gunningham 11701

3/24/15 RDO TUES

3/25/15 RDO WED

3/26/15 Thurs Tour 0700x1535

Assignment: Criminal Court.

0700: Present for duty @ 48 pct

0832: 84 @ crim court

1347: 98.

1400: 84 @ 48 pct

1435: EOT P. Gunningham 11701 (last time)

Fri 3/27/15 Tour 0700x1535.

Assignment: Criminal Court.

0700: Present for duty @ 48 pct

0833: 84 @ crim court

0144: 98

1213: 84 @ 48 pct

1235: on T/S duty

1530: off T/S

1535: EOT P. Gunningham

SAT 3/28/15 Tour 2315x0750

COB: Green Post 48A

- * Motorist was very repetitive he kept telling the same story about how a honda cut him off,
- * When arrested Deft stated he had to go to the bathroom,
- * Later my partner and I seen that Deft ~~went to~~ urinated in the back seat of our vehicle.
- * Deft used Bathroom at 45 pm when we got there Deft was holding on to the wall and swaying when he was using restroom.

~~The~~ ~~Out~~ me I could smell a faint odor of alcoholic beverage on his breath. his eyes were watery. Deft was asked if he drank any alcohol. he stated he had one beer. Deft said he came from a party with

CITY OF NEW YORK
POLICE DEPARTMENT

B

96033

83

Name PO ROTAS

Tax Reg. No. 946183

06:25 6/10/14
07:15 6/10/14
07:35 6/10/14
WHD: 84
1:00: 84

ened

10/13/14

Supervisory Officer

[Signature]

3/29/15

Supervisory Officer

[Signature]

Q12: 52F 2137 V442 Ave 1A

Q126: 90F1

0312115 0315 ST Ave

0230 Bumpers Boston/Tremont

Opposite side left turn off

Boston to Tremont

0446: 63

0540 98

0545: 75D F183 Southern

0610: 98

0655: 11 2178 Coston Ave

0726: 4003

0730: EOT 2847W

SAT 368 TOUR 2350750

2315: 8FD E 0430 Sgt Amil

PO Ocamer Green 5/27

4738 Noy Buckst

2345: 98

2346: 52F 2075 Boston Rd 1K

0001: 90F2 26618

0005: 52F 437 Morris Park Ave B56

0035: 90F1 0025

0040: 61 1487 V450 Ave

0102: 98

0103: Baking on sking E 188st Ave

0145: 98

0146 59 1046 E 180st

0155: 91FD

0226 iBuckin 2376 Webster 35

03/28/15 6225 WS, SPT, Andy

0230 1011 188 / Hickman St

2454 Fire Alarm Pulled

0235 91FD

0240 52 966 F 181 ST

0250 91

0251 10-2

0310 28

0430 63

0530 98

0530 54 Boston Rd E 180 St

0610 55 EMS

0640 98 to 45 Rd to take

collar from 48A

0645 84

1000 Breathalyzer Complete

BAC .134

1200 84 c 48 Rd

1230 Begin Arrest Paperwork

1430 Fingerprints Complete

1600 84 c. BLAR Office

1715 Called by ADA McCadden

1800 Case Drafted 98 to 48 Rd

1835 84 c 48 Paperwork Complete

FOI 28421

SUN 3/29/15 TOWN 23150750

2315: PFD while 5/28 PO O'Connor